

PT 07-21

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**GOOD SHEPHERD FOUNDATION
OF HENRY COUNTY,
Applicant**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket No: 06-PT-0041

**Real Estate Exemption
For 2005 Tax Year**

P.I.N. 08-22-300-043-0032

Henry County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Theresa L. Jones, White & Jones, on behalf of Good Shepherd Foundation of Henry County; Mr. Marc Muchin, Special Assistant Attorney General, on behalf of The Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether Henry County Parcel, identified by property index number 08-22-300-043-0032 (hereinafter the “subject property”) should be exempt from 2005 real estate taxes under 35 ILCS 200/15-65 of the Property Tax Code, in which all property actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit, is exempted from real estate taxes.

This controversy arose as follows: On December 9, 2005, Good Shepherd Foundation of Henry County (hereinafter “Good Shepherd”) filed a Property Tax

Exemption Complaint with the Henry County Board of Review seeking exemption from 2005 real estate taxes for the subject property. Dept. Ex. No. 1. The Board reviewed Good Shepherd's Complaint and recommended that the 2005 exemption be granted. The Illinois Department of Revenue (hereinafter the "Department") rejected the Board's recommendation in a determination dated March 9, 2006. This determination found that the subject property was not in exempt ownership and not in exempt use in 2005. Dept. Ex. No. 2. Good Shepherd filed a timely appeal of the Department's denial of exemption. On May 3, 2007, a formal administrative hearing was held with Mr. Arthur Lassman, Director and Treasurer of Good Shepherd, testifying. Following a careful review of the testimony and evidence, it is recommended that the Department's determination be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 and 2 establish the Department's jurisdiction over this matter and its position that the subject property was not in exempt ownership or use during 2005. Tr. pp. 7-8; Dept. Ex. Nos. 1 and 2.
2. Good Shepherd was incorporated on August 1, 1998 under the Illinois "General Not For Profit Corporation Act." Its purpose is "to provide facilities for clinical assistance for victims of alcohol and drug abuse; to assist in the education of the residents of Henry County, Illinois in matters relating to drug and alcohol abuse." Tr. pp. 13-14; App. Ex. No. 1.
3. On March 1, 2004, the State of Illinois' Department of Human Services licensed and certified Good Shepherd to "provide alcoholism and other drug dependency

services” for adult and adolescent outpatients, DUI evaluations, and DUI risk education. Tr. pp. 36-37; App. Ex. No. 6.

4. Good Shepherd has been exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code since September 5, 1980. Tr. pp. 14-16; App. Ex. No. 2.
5. The building on the subject property contains a counselor’s office, group meeting room, file and storage room, office for the President of the Board, family counseling room, Board meeting room, break room, adolescent counseling office, room for adolescent group meetings, copier and storage closet, office manager’s office, and a reception area. Tr. pp. 18-19; App. Ex. No. 4.
6. Good Shepherd’s “Description of Services” lists the following classes and their prices: Substance Abuse Evaluations, \$50; Adult Outpatient Treatment (2 evenings/week for 2 hours), \$360; Early Intervention Program (6 weeks for 2 hours/week), \$240; Extended Adult Outpatient (2 hours/week for 8 weeks), \$750; Discover Program (for adolescents at risk of abusing or in the early stages of abusing), \$100; DUI assessments, \$50; DUI Risk Education (educates clients on the effects of alcohol and drugs; 2.5 hours for 4 weeks), \$100; “Response to Denial Letters for Secretary of State,” \$25. There is an additional \$25 fee “per service for clients that reside out of Henry County.” App. Ex. No. 6.

CONCLUSIONS OF LAW:

An examination of the record establishes that Good Shepherd has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence

sufficient to warrant exempting the property from 2005 property taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by "institutions of public charity" and (2) "actually and exclusively used for charitable or beneficent purposes" (35 ILCS 200/15-65). Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156 (1968) (hereinafter "Korzen").

In Korzen, the Illinois Supreme Court outlined the following "distinctive characteristics" of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on

government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen *supra* at 157.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994). Good Shepherd has failed to prove, by clear and convincing evidence, that the subject property falls within the statutory requirements for exemption of property for charitable purposes.

Good Shepherd was incorporated on August 1, 1998 under the Illinois “General Not For Profit Corporation Act.” Its purpose is “to provide facilities for clinical assistance for victims of alcohol and drug abuse; to assist in the education of the residents of Henry County, Illinois in matters relating to drug and alcohol abuse.” Tr. pp. 13-14; App. Ex. No. 1. On March 1, 2004, the State of Illinois’ Department of Human Services licensed and certified Good Shepherd to “provide alcoholism and other drug dependency services” for adult and adolescent outpatients, DUI evaluations, and DUI risk education.

Tr. pp. 36-37; App. Ex. No. 6. Mr. Lassman testified that the high school and middle school in Geneseo refer students and parents to Good Shepherd for alcohol and drug counseling. Henry County Circuit Court refers people to Good Shepherd for DUI assessments. The DUI assessment determines the level of alcoholism of the patient and an appropriate treatment program for that level. The highest level of alcoholism requires inpatient treatment which Good Shepherd does not provide. The court may require that before a license will be reissued, the driver must take classes based on their assessment level. Mr. Lassman testified that Good Shepherd provides these classes. Tr. pp. 29-32.

No financial statements were admitted into evidence for Good Shepherd. Mr. Lassman was asked in cross-examination how much money Good Shepherd received from client billing. He responded: “Without some record, I just can’t tell you.” When asked again about this issue, he responded: “I am sorry. I just don’t have those numbers in front of me. I’d have to get those numbers.” Tr. pp. 38-39. On redirect, Mr. Lassman estimated that Good Shepherd received \$4 in donations for every \$1 in client payment. Tr. p. 49. No documentation was admitted to support this estimate. Mr. Lassman did not know “how much money Good Shepherd obtained in the year in question, total.” Tr. p. 41. Without documentation, Good Shepherd has failed to prove that its funds are derived mainly from private and public charity and the funds are held in trust for the objects and purposes expressed in the charter, a distinctive characteristic of a charitable organization recognized by Korzen.

Mr. Lassman testified that Good Shepherd has one full time employee who does intake counseling and one part-time employee who does paperwork, typing, computer work and answers the phone. Tr. pp. 11-12. Mr. Lassman testified that the Board of Directors is not paid. Tr. p. 12. There was no testimony or documentation as to who

teaches the classes or provides the counseling or does the evaluations that Good Shepherd offers. Without documentary evidence on employees and salaries, Good Shepherd has failed to prove that the organization does not provide gain or profit in a private sense to any person connected with it.

Mr. Lassman was asked “how many people did [Good Shepherd] give services to for free” in 2005. He responded that he could not answer the question without looking at schedules. “There is no way for me to have that information. As a matter of fact, that’s privileged information.” Tr. p. 40. Mr. Lassman was asked how many people Good Shepherd gave services to using a sliding fee schedule. He responded: “I can’t answer that.” Tr. p. 41. No documentary evidence was offered to show how many people were provided free or reduced cost services by Good Shepherd in 2005. Without documentary evidence on this issue, Good Shepherd has failed to prove that charity is dispensed to all who need and apply for it or that the benefits derived are for an indefinite number of persons.

Good Shepherd’s “Description of Services” lists the following classes and their prices: Substance Abuse Evaluations, \$50; Adult Outpatient Treatment (2 evenings/week for 2 hours), \$360; Early Intervention Program (6 weeks for 2 hours/week), \$240; Extended Adult Outpatient (2 hours/week for 8 weeks), \$750; Discover Program (for adolescents at risk of abusing or in the early stages of abusing), \$100; DUI assessments, \$50; DUI Risk Education (educates clients on the effects of alcohol and drugs; 2.5 hours for 4 weeks), \$100; “Response to Denial Letters for Secretary of State,” \$25. There is an additional \$25 fee “per service for clients that reside out of Henry County.” App. Ex. No. 6. Mr. Lassman was asked in cross-examination if Good Shepherd communicated its

fee policy to the public. He responded: “[T]he fee policy is posted for everyone to see when they come in. We don’t put an ad in the paper.”

He was then asked whether Good Shepherd advertises that fees can be waived and services provided for free. “How do you communicate that to the public?” Mr. Lassman responded: “We don’t.” Mr. Lassman was then asked “[W]hat proof do you have that people know about the free policy?” He responded: “I don’t have any.” Tr. pp. 41-42. Based on this cross-examination and without any documentary evidence, I am unable to conclude that Good Shepherd does not place obstacles in the way of those who need and would avail themselves of the benefits it dispenses.

Furthermore, I am unable to reach any conclusion, based on the evidence and testimony presented at the evidentiary hearing, that Good Shepherd owns the building on the subject property. Mr. Lassman testified that Good Shepherd has “been around” since 1978, but had moved to a new location on the subject property in 2002. Counsel for Good Shepherd asked Mr. Lassman whether Good Shepherd moved into an existing building or built a building. He responded: “We built a building.” Counsel then asked: “If I asked did you purchase the building in approximately August of 2003, would that be correct?” Mr. Lassman responded “yes,” and, further, that Good Shepherd purchased the building from Bob Johnson. Tr. pp. 16-17. No documentary evidence was admitted showing that Good Shepherd purchased, built or owned a building on the subject property.¹

In looking at the characteristics of a charitable organization as discussed in Korzen, it is clear that Good Shepherd has failed to prove, by clear and convincing

¹ Mr. Lassman testified that the land on the subject property was purchased from “the Boon brothers.” Tr. pp. 16-17. A warranty deed showing a land purchase, recorded August 15, 2003, was admitted into evidence as App. Ex. No. 3. There is no property index number on the deed and I am unable to conclude that this purchase comprises the land on the subject property.

evidence, that the subject property was owned by a charitable organization or used for charitable purposes in 2005. It must also be noted that the pre-trial hearing in this matter took place on January 25, 2007, and the evidentiary hearing was held on May 3, 2007. Although Good Shepherd had more than three months to prepare for the hearing, the evidence presented was incomplete, inadequate and insufficient to warrant exempting the subject property.

For the above stated reasons, it is recommended that the Department's determination which denied the exemption from 2005 real estate taxes on the grounds that the subject property was not owned or used by an "institution of public charity" should be affirmed, and Henry County Parcel, Index Number 08-22-300-043-0032, should not be exempt from 2005 real estate taxes.

Kenneth J. Galvin

July 9, 2007